

City of Federal Way
NPDES Phase II
Preliminary Draft Comments
August 17, 2005

1. Page 3, line 35 – Permit should not automatically provide coverage for those jurisdictions which submitted NOI in 2003. The previous applications contained proposed BMP's, measurable goals, and milestones for each of the 6 minimum measures. These do not apply for this permit so for those jurisdictions not paying attention, this could cause great confusion.
2. Page 5, S2. Authorized Discharges, lines 5-9 – New Stormwater Discharges – sets up a conflict between state vesting laws and the permit requirements. Some developments are vested up to 10 years and therefore do not have to be compliant with the new DOE stormwater manual or its equivalent. This provision puts the jurisdiction out of compliance if they allow vested rights for stormwater to continue. Revise section to recognize state vesting laws.
3. Page 5, line 14 – Stormwater discharges to ground waters not in *hydraulic continuity* with surface waters...It would be helpful if specific criteria or a court decision were listed upon which to rely when making a decision on hydraulic continuity.
4. Page 5, line 29 - fire fighting activities. This seems an unreasonable provision to enforce. How can saving lives or property be prevented by local jurisdictions? What are we to do if these are identified as significant sources? Suggest this section be deleted.
5. Page 6, lines 7-11 - B. – What incentive is there for jurisdictions to partner if there is no consequence to the partner for failure to comply? Is there a mechanism by which responsibility can be transferred?
6. Page 6, line 15 - C. – Just a comment that this is a strange place to put this statement. Suggest this be moved to page 1, line 21 as an additional sentence.
7. Page 6, line 27 - B. TMDL's – this section could do with a little more explanation. Please clarify that this section only applies to TMDL's found in Appendix 3. Tracking of actions is not required on TMDL's issued after the permit is issued.
8. Page 6, line 38 - This section only gives 90 days for development of a QAPP. Our experience indicates that 90 days is very likely not enough time to develop the QAPP. Suggest 120 days instead.

9. Page 7, line 11 - 180 days to implement the QAPP may not be enough time if equipment has to be purchased and/or legislative process has to be followed (equipment purchases, rights of entry, etc.). Further, Ecology must review and approve the QAPP before it can be implemented and it is unlikely that purchase of needed equipment would be done before approval is received. Suggest 120 days after QAPP is approved for implementation.
10. Page 7, line 20 - D. – We have concerns about the way this section is written. It appears that if we don't automatically start implementing a TMDL after issuance, Ecology can make a determination that progress is not being made and therefore modify the permit to include the TMDL. This appears to be a way to force implementation of the TMDL without actually requiring it through the permit language. Suggest that language be inserted to clarify that the permit would only be modified or administrative order issued after a public process was followed.
11. Page 7, line 36 - B. Existing Stormwater Discharges –If this permit is viewed as MEP and the DOE manual accomplishes MEP and if all existing stormwater discharges are required to reduce the discharges of pollutants to the maximum extent practicable (MEP), it appears that this would lead to requiring the MS4 retrofit all stormwater systems to the new design standards for quantity as well as quality. Please clarify that this section will not result in retrofitting the MS4 system.
12. Page 8, lines 1- 3 - Add language clarifying that this will not result in retrofitting the MS4 system.
13. Page 8, line 5 - C. New Stormwater Discharges – this whole section flies in the face of state vesting laws. Further, it raises an issue of what is a new stormwater outfall? The definition on page 38 can be interpreted in various ways, many not good to capital programs that are replacing undersized outfalls that are causing flooding problems. Suggest modifying the language to clarify that replacement of failing or inadequate outfalls does not qualify as “new stormwater discharges”.
14. Page 8, lines 12-28 – this effectively requires application of the Ecology Manual to all new developments as the level of proof to be met is so high no one can afford it. This is contrary to the Ecology position that the Manual is guidance only. Further, this conflicts again with state vesting laws by requiring application of the Appendix 1 from the effective date of the permit.
15. Page 8, line 39, section C.2 –Does not explain what additional controls may be needed. This leaves the designer and reviewer hanging. Suggest Ecology include types of controls which must be applied in specific cases. Even King County's manual recognizes that there are situations that cannot be mitigated.

16. Page 9, line 11, S6. Monitoring - This section places the burden on local jurisdictions to come up with a master plan to prove that Ecology's manual, BMP's and approach to permitting stormwater discharges is valid and results in improvements to the environment. The overall questions being asked are too broad and extend beyond the reasonableness test for a Phase II permit. Federal Way is opposed to implementing a monitoring program that mimics the Phase I permit requirements and/or does not result in improvements to the MS4 system maintenance or operations. Further, we believe it is not the responsibility of the local jurisdictions to validate the BMP's Ecology approves through the Ecology technical manual. We would support Ecology implementing an evaluation program of testing by others including an advisory committee convened to determine which of the current BMP's need additional testing for effectiveness. We ask Ecology to recognize the limited capabilities, staff, expertise, equipment, etc., that Phase II jurisdictions have available for any kind of monitoring program. An alternative S6 section is attached to this comment document.
17. Page 9, line 26 and beyond - If Ecology decides to move forward with the permit language as written, we suggest Ecology place some parameters around the monitoring program. As it sits, it is unclear what type of program is to be developed, what will be viewed as satisfactory, and what measures should be included/studied. Local jurisdictions need some form of assurances that a monitoring program submitted would be approved.
18. Page 9, line 36 - This section is overly broad - what do we test initially, how do we test for it, do we all test a different BMP, etc.? With the possible exception of flow monitoring, to our knowledge, no Phase I jurisdiction has determined any trends from 10 years of testing and made any adaptive management changes to the program based on testing of water quality or BMP's. Therefore, it is unlikely any water quality monitoring program can answer the question posed in this section.
19. Page 9, line 40 - Please define impacts that are to be tested for in the program. What are we testing for? Fecal? Temperature? pH? While we recognize that Ecology is asking for a monitoring plan in year four, the questions being asked for the plan are too vague. We suggest Ecology only require we look at those water bodies on the 303 (d) list and develop QAPP's for those parameters of concern.
20. Page 10, line 2 - Again, Federal Way's position is that if Ecology wants existing BMP's tested, this responsibility does not rest on local jurisdictions but on the state and the permit is an inappropriate mechanism to push down such testing onto the permittees. If Ecology continues with this avenue, be aware that this language too vague. What type of QAPP could be developed for this type of testing?

21. Page 10, line 7 - B. – This is unacceptable due to extensive bureaucratic processes involved. We are uncertain as to who would act as the lead as there are four (4) Phase I jurisdictions bordering Federal Way. If three of the four decided to lead an effort, we would need to hire at least another person just to allow us to participate in the process. Further, this appears to result in phase II jurisdictions funneling money to Phase I's to implement their monitoring programs. What about those who are surrounded by multiple Phase I entities? Who do we partner within each basin? This process should not be a mandated permit issue (which it would end up being because few Phase II jurisdictions have the capabilities to conduct the proposed alternative found in section S6. B (1) ((c))).
22. Page 11, line 12 - 2. – This has many problems such as no certainty to jurisdictions, any direction, and Ecology having the ability to change things at their discretion with no input from the local jurisdiction. There needs to be a process developed by which the permittee(s) are involved in any changes with the opportunity to object to Ecology imposed changes. If Ecology knows what the program needs, it should be laid out in the permit at this time.
23. Page 11, line 20 – If no monitoring is required in the first permit cycle, what “monitoring-related implementation actions” are there to include in the annual report?
24. Page 11, line 22 - S7. Stormwater Management Program. Of the questions asked in the box, Federal Way does not think the Phase I and II permits have to have a consistent organization structures or outlines for the stormwater management programs.
25. Page 11, line 30 – The reference to S7.D.1 through S7.D.6 should reference S7.C.1 and S7.C.6.
26. Page 12, line 1 – 2. Are the schedules laid out in this draft permit realistic for all jurisdictions? Can Ecology accept different timelines for jurisdictions based on where they are relative to the various items? We are concerned that Ecology does not have resources necessary to review and comment on submittals. This leads to unrealistic expectations by Ecology, jurisdictions, and outside interested parties.
27. Page 12, line 6 – Are annual updates a requirement of the CWA or a federal court decision? If neither, then this is another paper chase with little positive benefits to the environment. Delete language requiring submittal of annual updates outside of federal CWA requirements. We are unclear whether the updates have to go to Ecology or stay internally.
28. Page 12, lines 10-13 - 4. Since Ecology is not doing anything with phase I reports and it is costly to produce, why are we being required to do this too?

How do we evaluate permit compliance and determine the effectiveness of the SWMP implementation? This section is too vague and needs work.

Submitting detailed annual reports on all activities relating to the permit, as proposed by Ecology, would create a huge and unnecessary paperwork burden that Ecology staff has admitted won't even be reviewed. In addition, much of the reporting will be on activities that are multi-year (i.e., monitoring) that normally can't be documented until it is fully developed and meaningful results can be reported. The following is a much more reasonable approach that should meet the intent of the Federal EPA rules:

- a. Annual reporting shall be a simple checklist of activities as it relates to EPA's 6 minimum measures. This checklist would be developed during the first year (and approved by Ecology).
- b. Financial data will not be reported, given the fact that many jurisdictions do not have the capability of tracking financials to the degree be asked by Ecology in the draft permit, and money spent on a stormwater program should not be used as an indicator or measure of whether the jurisdiction is complying with the permit.
- c. Additional data on the stormwater program, such as educational materials, stormwater laboratory results, maintenance records, enforcement actions, etc. can be made available to Ecology but only if requested in advance.

Jurisdictions can advertise the nature and availability of the Phase 2 permit information on their website, but not be required to include the specific information.

29. Page 12, line 14 - Tracking costs for the SWMP will be costly. If it is not a requirement of the CWA then it should be deleted. If it remains, Ecology should develop a simple cost tracking sheet for use by all jurisdictions.
30. Page 12, line 19 - B. Please include language that clearly states that existing flows are meeting MEP. Else, this could lead to an interpretation that retrofitting is required.
31. Page 12, line 28 - 1. Public Education and Outreach – general comments:
 - a. Multimedia approaches are good if discretion left to each jurisdiction on how to interpret and implement. We are concerned that making this a requirement of the permit exceeds the CWA intention.
 - b. The time line to implement this program is too aggressive for most jurisdictions; suggest breaking down into smaller segments over period of permit.
 - c. Need to define what “all audiences” means. Suggest using “appropriate target audiences as determined by the jurisdiction”.

- d. Should the presentations be multi-lingual? Suggest this be left up to the jurisdiction.
32. Page 13, line 28 - 2. Public Involvement and Participation – general comments
- a. Clarify that not all listed opportunities need to be provided, e.g., FW does not have an advisory council for the stormwater utility but all issues go through a public process.
 - b. The time to implement this program is too aggressive for most jurisdictions. Further, involving the public in the decision making processes involving the development, implementation and update of the entire SWMP within a year may be difficult. What if the public process results in a recommendation to drop a portion of the SWMP?
 - c. There seems little reason to post our SWMP on our website as well as to send it electronically to Ecology. Suggest changing the language to allow for posting on either Ecology's website or the local jurisdictions. Will Ecology attempt to set a standard for electronic submittal?
33. Page 14, line 8 - 3. Illicit Discharge Detection and Elimination – general comments:
- a. Federal Way will be able to comply with this within the four years requested, however it is expected that most jurisdictions will not.
 - b. Page 14, lines 31-34 are not acceptable to Federal Way. Jurisdictions should not be required to change GIS format standards to meet Ecology's due to the expense and effort involved unless Ecology funds the effort. These maps can be provided in a hard copy format if Ecology desires and requests them.
 - c. In the list of non-stormwater discharges, we find it curious that springs and flows from riparian habitats and wetlands is included as these are critical to natural ecosystems.
 - d. Field screening of all outfalls into three high priority water bodies may be difficult if the only water bodies are large lakes and the Puget Sound. The referenced document, page 16, lines 12-14, should only be used as a guidance and only chapter 11 of it. The question arises, how does one get a determination of equivalency if Ecology is understaffed?
 - e. Page 17, lines 4-10 - Training of municipal field staff on illicit discharges could be interpreted to include all municipal staff who ventures into the field on occasion. Suggest this be clarified as well as what constitutes appropriate training. Annual refresher courses seem too frequent for those whose job responsibilities only bring them a chance of seeing an illicit discharge. Suggest every three years with annual trainings for new staff.

34. Page 17, line 11 - 4. Controlling....Sites – general comments:
- a. Federal Way does not support the interpretation of pre-development to mean fully forested or pasture in an urban setting. Specifically, redevelopment will be throttled and forced outside the urban core into more rural areas due to land requirements and high costs. Federal Way believes, in consultation with our City Attorney, that requiring re-development to view the site as forested will result in a legal takings. See cover letter.
 - b. The constant reference to Appendix 1 and then the 2005 Stormwater Management Manual for Western Washington, or an equivalent manual approved by the Department is confusing to the casual reader. The 2005 Stormwater Management Manual for Western Washington is a guidance document and as such, inclusion in the permit language makes is enforceable as law contrary to Ecology's previous determinations. We believe inclusion of language referring to the Manual violates State process for rule making as well as creation of new state law.
 - c. Page 18, lines 4-7 - Since Ecology does not plan on reviewing any manual submitted by a Phase I or II jurisdiction for equivalency, the permittee is left with few options but to use the 2005 Ecology Manual.
 - d. This section needs to account for state vesting laws.
 - e. Page 17, line 38 - The requirement effectively results in application of the DOE manual as no equivalent manuals exist. We are concerned that the effort needed to justify alternative methods outside of Ecology's manual will result in only application of the 2005 DOE manual. We are unclear who decides if a counter proposal meets AKART?
 - f. Page 18, lines 10-12 - By requiring all jurisdictions to allow LID techniques, it opens up the door to claims of surface water management meddling in land planning/zoning efforts. LID is not applicable everywhere at all times to everyone. While LID can be of benefit to some locations, LID is also a complete paradigm shift for many jurisdictions. This changes the way the land looks and should be addressed through Growth Management Act efforts, not NPDES permitting.
 - g. Constant reference to the 2005 Ecology manual is inappropriate since it is a guidance document, not law. (Multiple locations on pages 17 and 18)
 - h. Page 19, line 27 - Annual inspection of all stormwater facilities – public or private or both? FW assumes this is to mean only public facilities. If this means private facilities too, then it goes beyond the MS4 intentions and could result in violation of our permit as we don't have authorization to enter onto private property in all cases.

- i. Page 19, lines 12 – 34 - Are the timelines and fines outlined intended to be applied to municipal facilities?
 - j. Page 20, lines 5-7 – It is not the responsibility of local jurisdictions to make available copies of the “Notice of Intent for Construction Activity” and/or copies of the “Notice of Intent for Industrial Activity”. With limited staff and resources, we do not want this responsibility a part of the NPDES permit language. Delete it.
35. Page 20, line 16 - 5. Pollution ...Operations – general comments:
- a. Page 20, lines 23-25 - Reference to the 2005 DOE manual is inappropriate, delete it. Require jurisdictions to create or adopt appropriate maintenance standards and leave it at that. Can use 2005 manual as a reference/example for others to follow or adopt but don't set it up as the standard which must be followed.
 - b. Page 20, lines 32-36 – The reference to examples leads the reader to conclude that these are hard and fast rules. Suggest deleting the examples and leaving it to the jurisdiction to determine what a timely manner is on a case by case basis.
 - c. Page 20, line 37 - Is annual inspection reasonable for all jurisdictions?
 - d. Page 21, line 12 – Delete “Permittee.”
 - e. Page 22, line 17 - At this time there is no S10, Record Keeping to review, please provide.
36. Page 28, line 13 - S9. Reporting Requirements – general comments
- a. Very burdensome for the average jurisdiction. Will require extensive staff time to produce and Ecology has already said they will not review.
 - b. Page 28, line 29 - Reporting annual expenditures should be deleted.
 - c. Page 28, line 35 – This is an entirely subjective assessment and belongs with Ecology. Providing an assessment of the appropriateness of the BMP's under B.6 will be difficult and of little true value. Delete this section.
37. Page 37, lines 1-6 – Appendix 8 has not been completed. Unless the form is simple, it will require extensive time. Suggest simplicity is best.
38. Page 31, line 16 - G9. Monitoring – general comment: Delete this section if monitoring for wet chemistry is not a part of the permit. Also, this was clearly taken from a permit for treatment plants and so much is not appropriate. Revise language to delete “upsets” and “effluent”.

39. Page 31, line 26 – Change five to three.
40. Page 32, lines 3-11 – Flow monitoring equipment needs maintained frequently. Calibration of once per year will result in useless data. Federal Way calibrates our flow monitoring equipment at least quarterly or more frequently depending on the channel characteristics and propensity to change during storm events.
41. Page 32, lines 20 – 22 – If Phase II permit does not require monitoring (see page 11, lines 18-19), then this section should be deleted.
42. Page 35, line 36 – Change “authorized” to “vested” to recognize state vesting laws.
43. Page 38, line 2 – Change “authorized” to “vested”. Change language in this section to eliminate “flow rate”. Add the following: “Modifications to existing conveyance structures to eliminate persistent flooding conditions or to satisfy Washington State Hydraulic Project Approval conditions shall not be viewed as new stormwater outfalls.
44. Page 38, line 29 – Change “form” to “from”.
45. Clean up Appendix 1. Too many references to the 2005 DOE manual which is supposed to be a guidance document only.

